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21 UNITED STATES DISTRICT COURT
22 SOUTHERN DISTRICT OF CALIFORNIA

23 GEN-PROBE, INCORPORATED,)

24 Plaintiff,)

25 v.)

26 VYSIS, INC.,)

27 Defendant.)
28

Case No.: 99CV 2668H (AJB)

DECLARATION OF JOHN H.
L'ESTRANGE, JR. IN SUPPORT
OF MOTION BY DEFENDANT VYSIS,
INC. FOR A STAY OF PROCEEDINGS
AND, ALTERNATIVELY, TO DISMISS
COUNT FOUR UNDER FEDERAL RULE
OF CIVIL PROCEDURE § 12(b)(6)

Date: April 10, 2000

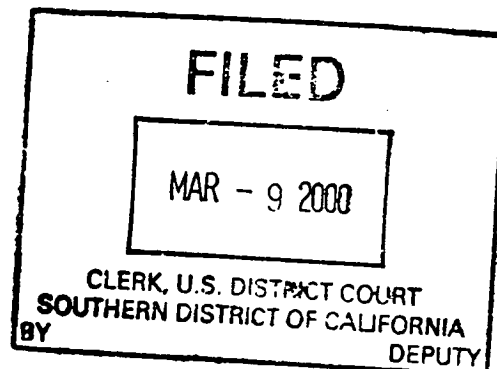
Time: 10:30 a.m.

Place: Dept. 1

21 I, John H. L'Estrange, Jr., declare as follows:

22 1. I am a member in good standing of the state bar of
23 California, and a partner in the law firm Wright & L'Estrange,
24 counsel for Defendant Vysis, Inc. ("Vysis") in the above-captioned
25 proceeding. I make this declaration, based on information and
26 belief, in support of the motion by Vysis for a stay of proceedings
27 and, alternatively, to dismiss Count Four of the First Amended
28 Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

Case No.: 99CV 2668H (AJB)



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1 2. Attached hereto as Exhibit A is a true and correct copy of
2 United States Patent No. 5,750,338 ("the '338 patent")

3 3. Attached hereto as Exhibit B is a true and correct copy of
4 a letter dated January 6, 2000, from Peter Shearer, Vice President
5 for Intellectual Property for Gen-Probe Incorporated to Norval
6 Galloway, counsel for Vysis.

7 4. Attached hereto as Exhibit C is a true and correct copy of
8 a letter dated January 19, 2000, from Norval Galloway, to Peter
9 Shearer.

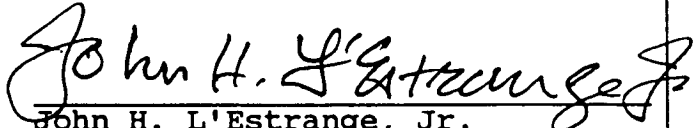
10 5. Attached hereto as Exhibit D is a redacted copy of the
11 license agreement which is alleged in paragraph 20 of the First
12 Amended Complaint in the above captioned action.

13 6. Attached hereto as Exhibit E a true and correct copy of the
14 application to the United States Patent and Trademark Office ("PTO")
15 filed to reissue the '338 patent. This application was filed with the
16 PTO on March 8, 2000.

17 7. Attached hereto as Exhibit F is a true and correct copy of
18 the first set of interrogatories personally served by Vysis on Gen-
19 Probe on January 26, 2000. The stipulated order of this court dated
20 February 8, 2000, provides that Gen-Probe's responses to Vysis' first
21 set of interrogatories are due on or before March 27, 2000.

22 I declare under penalty of perjury that the foregoing is true
23 and correct to the best of my knowledge, information and belief.

24 Executed this 9th day of March, 2000, at San Diego, California.

25 
26 John H. L'Estrange, Jr.